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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/642,606	08/19/2003	John J. O'Mahony	3659-69	2800
23117	7590	07/26/2004		EXAMINER
NIXON & VANDERHYE, PC				BIANCO, PATRICIA
1100 N GLEBE ROAD				
8TH FLOOR			ART UNIT	PAPER NUMBER
ARLINGTON, VA 22201-4714				3762

DATE MAILED: 07/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/642,606	O'MAHONY ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Patricia M Bianco	3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

- 1) Responsive to communication(s) filed on 30 May 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

- 4) Claim(s) 16-26 and 28-30 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 16-26 and 28-30 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 18 December 2003 is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 8/03 & 4/04.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

**DETAILED ACTION**

***Election/Restrictions***

Applicant's election without traverse of Group I in the reply filed on 5/30/04 is acknowledged.

Applicant has canceled claims 1-15 and 27 and new claims 28-30 have been added and read on the elected invention.

Therefore, currently claims 16-26 and 28-30 are currently pending and have been examined on the merits.

***Information Disclosure Statement***

The information disclosure statement filed August 19<sup>th</sup>, 2003 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered. No copies of the "Other Documents" were received with the PTO-1449, and therefore have not been considered. The US references have been considered.

***Specification***

Applicant has indicated co-pending applications in the first paragraph of the specification. The first page of the specification should be updated to clarify the status of all related applications noted in the first paragraph of the specification. The status of

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nonprovisional parent application(s) (whether patented or abandoned) should also be included. If a parent application has become a patent, the expression "now Patent No. \_\_\_\_\_" should follow the filing date of the parent application. If a parent application has become abandoned, the expression "now abandoned" should follow the filing date of the parent application.

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because it contains legal phraseology, specifically "disclosed". Correction is required. See MPEP § 608.01(b).

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). The specification as originally filed and as amended on August 19<sup>th</sup>, 2003 does not provide proper antecedent basis for the following claim limitations and correction is required:

- (i) “the pictogram flashes....at a location of a bloodline where a leakage of blood is/was detected” as recited in claims 17, 19, 20, & 21;**
- (ii) “the pictogram flashes in alternating colors” as recited in claims 17-23;**
- (iii) “the pictogram flashes a symbol of a blood roller pump” as recited in claims 24 & 25;**
- (iv) “the first section of a blood path” as recited in claims 28-30;**
- (v) “the second section of a blood path” as recited in claims 28-30.**

***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the following claimed subject matter must be clearly shown or the feature(s) canceled from the claim(s). No new matter should be entered.

- (i) “the first section shows a first portion of a blood path” and “the second section shows a second portion of the blood path” as claimed in claims 29;**
- (ii) “the first section and highlights a bloodline shown in the first section” and “the second section and highlights a bloodline shown in the second section” as claimed in claims 30;**
- (iii) “a symbol of a blood roller pump” as claimed in claims 24 & 25.**

Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheets should include all of the figures appearing on the immediate prior version of the sheet, even if

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only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the examiner does not accept the changes, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 16-26 & 28-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 16, "the pictogram" is not positively claimed, but rather is recited in the intended use or functional language of the controller.

Claims 17-26 & 28-30 are also rejected insofar as they further limit "the pictogram" but also do not positively recite the limitation.

Claims 16-26 & 28-30 recite the limitation "the display" in line 4 of the claim.

There is insufficient antecedent basis for this limitation in claim 16. Claims 17-26 & 28-30 are also rejected insofar as they are dependent from claim 16 and further limit the invention.

Claims 16-26 & 28-30 recite the limitation "the pictogram" in line 4 of the claim.

There is insufficient antecedent basis for this limitation in claim 16. Claims 17-26 & 28-30 are also rejected insofar as they are dependent from claim 16 and further limit the invention and "the pictogram."

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 16-26 and 28-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Wahl et al. (US 5,653,887). Wahl et al. (hereafter Wahl) discloses an extracorporeal blood treatment system and method having a controller that has a graphical operator interface as part of the control system, which uses pictorials to display where a problem has occurred. As shown in figures 40 & 41, when a problem occurs a text box with text indicating the problem and a pictorially displayed shows the operator where to investigate the problem. As shown in the figure, a fluid processing

assembly has an arrow pointing directly to the circuit, which is seen to be accentuating an element of the diagram where a fault has been detected. Col. 59, line 61-col. 60, line 67. The graphical operator interface as part of the control system, which uses pictorials to display with the text on the display when a problem (fault) has occurred to show the location, as well as including an arrow pointing directly to the circuit to accentuate an element of the diagram where a fault has been detected. With respect to the limitations of "the pictogram," said pictogram is not positively claimed, but rather is recited in the intended use or functional language of the controller and have been treated as intended use recitations. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). Since the pictogram is a result of the operation of the controller, and has not been positively claimed, if the system's controller of Wahl is capable of performing the recited function. Further, the recitations of "the pictogram" are functional recitations of operating or using the device, namely operation of the controller. The functional recitations have not been given patentable weight because it is in narrative form. In order to be given patentable weight, a functional recitation must be expressed as a "means" for performing the specified function, as set forth in 35 USC § 112, 6<sup>th</sup> paragraph, and must be supported by recitation in the claim of sufficient structure to warrant the presence of the functional language. *In re Fuller*

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kenley (US 5,788,851), Zimmerman et al. (US 5,609,770), Dobbelaar (US 6,538,672) and Borders (us 6,560,492) disclose medical equipment having controllers and user interfaces that display pictograms.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia M Bianco whose telephone number is (703) 305-1482. The examiner can normally be reached on Monday to Friday 9:00-6:30, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (703) 308-5181. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

July 23<sup>rd</sup>, 2004



PATRICIA BIANCO  
PRIMARY EXAMINER

Patricia M Bianco  
Primary Examiner  
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